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IN THE

Supreme Court of the United States

October Term 1962

No. 1062

SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC, GULF, LAKES AND INLAND WATERS DISTRICT, *Puerto Rico Division*, AFL-CIO,

Petitioner,

vs.

FREDDY CASTRO,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

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SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC, GULF, LAKES AND INLAND WATERS DISTRICT, Puerto Rico Division AFL-CIO,

Petitioner,

vs.

FREDDY CASTRO,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

Petitioner prays that a writ of Certiorari issue to review the judgment of the Supreme Court of the Commonwealth of Puerto Rico, entered in the above entitled case on March 15, 1963.

Opinions Below

The order of the Superior Court of the Commonwealth of Puerto Rico is unreported and is printed in Appendix B hereto *infra*, p. 11. The judgment of the Supreme Court of the Commonwealth of Puerto Rico, issued without an opinion is unreported and is printed in Appendix B hereto, *infra*, p. 15.

Jurisdiction

The judgment of the Supreme Court of the Commonwealth of Puerto Rico was entered on May 15, 1963. The jurisdiction of this Court is invoked under 28 *U. S. C.*, Section 1258.

Questions Presented

I. Whether in the enactment of legislation in the field of wages and hours, applicable in interstate commerce, a political subdivision of the United States, be it a state or commonwealth, must follow federal law to the effect that labor organizations operating in interstate commerce be free from interference in their relations with their officers and agents.

II. Whether the exclusion set forth in Section 3(d) of the Fair Labor Standards Act, 52 Stat. 1060, 29 *U. S. C.*, Section 203(d) preempts the field, thus precluding a political subdivision of the United States of America from enacting legislation contrary thereto.

III. Whether the courts of the Commonwealth of Puerto Rico must follow the prohibition set forth in Section 3(d) of the Fair Labor Standards Act as amended, 29 *U. S. C.*, Section, 203(d), which excludes from its definition of "employer," a labor organization in its relation with its officers and agents, in a wage claim filed against a labor organization operating in interstate commerce by a former labor organizer.

IV. Whether a labor organizer is an employee of a labor organization within the purview of the Fair Labor Standards Act of 1938, as amended.

Statutes

The pertinent provisions of the applicable laws are printed in Appendix A, at pages 9-10, *infra*: Act Number 379, of May 15, 1948 (29 *L. P. R. A.*, Sections 274, 288); Fair Labor Standards Act of 1938, as amended, (29 *U. S. C.*, Sections 203(d), 213(a)(1), 218); The Judiciary Act (28 *U. S. C.*, Section 1258).

Statement

This case concerns the right of a labor organizer to institute a wage claim against a labor organization which operates in interstate commerce.

Petitioner herein, the Seafarers International Union, Atlantic, Gulf, Lakes and Inland Waters District, Puerto Rico Division, AFL-CIO, hereinafter referred to as the *Seafarers*, or as *Petitioner*, is a labor organization within the meaning of the Labor Management Relations Act, as amended (29 *U. S. C.*, Sections 151, *et seq.*). During the period of time involved, petitioner had several collective bargaining agreements with employers who were engaged in interstate commerce or in the production of goods for interstate commerce, covering thousands of employees. Respondent herein was an officer of the *Seafarers* during the period of time involved.

Respondent worked for petitioner as a labor organizer. In the performance of his duties, respondent worked in excess of eight hours a day and forty hours a week.

On March 31, 1960, respondent brought an action before the Superior Court of Puerto Rico, Case Number 60-2046 claiming overtime compensation for the extra hours worked by him during the period of his employment with the *Seafarers*. The claim was based on an alleged contract of employment limiting his hours of work to forty hours a week, and further on the basis of the provisions of Act Number

379, of May 15, 1948, 29 *L. P. R. A.*, Sections 271, et seq., hereinafter referred to as Act 379.

The parties stipulated that the enterprises covered by the collective bargaining agreements in effect during respondent's term of employment with the *Seafarers* produced goods for interstate commerce, or were otherwise engaged in such commerce. At the end of respondent's introduction of evidence, petitioner herein made a motion for *non suit*, on the grounds that the evidence adduced by respondent had established that during his tenure of employment with the *Seafarers* he had occupied the position of an officer of said labor organization, that the Fair Labor Standards Act of 1938, as amended, herein after referred to as the *F. L. S. A.*, applied to this action, to the exclusion of any applicable local law and therefore, respondent did not have a cause of action against the employer, petitioner herein.

The Superior Court of Puerto Rico dismissed the motion on the grounds that, although the *F. L. S. A.* applied to the case, the provisions of Act 379, specifically section 5 of said law also applied and that respondent had introduced some evidence sustaining a cause of action under said local law. A motion for reconsideration was denied by the Superior Court of Puerto Rico on February 25, 1963. A Writ of Certiorari before the Supreme Court of the Commonwealth of Puerto Rico, was denied on March 15, 1963.

Reasons for Granting the Writ

The Superior Court of Puerto Rico (Appendix B, *infra* p. 11), sustained by the Honorable Supreme Court of the Commonwealth of Puerto Rico (Appendix B, *infra* 15), held that regardless of whether a labor organizer is or is not an officer of a labor organization he has a right to compensation for overtime work under Act 379.

This holding constitutes grievous error which merits review by this Honorable Court, in view of the fact that a labor organizer is an officer of the Union in accordance with the custom and usage of organized labor and pursuant to the applicable federal law.[1]

There is no doubt that the Fair Labor Standards Act, hereinafter referred to as the *F. L. S. A.*, is applicable to the instant case. Said statute, pursuant to Section 3(d), includes within its coverage "labor organizations when acting as an employer." The obvious intent of Congress was to include within the protection of the law, ordinary employees of a labor organization, such as clerical workers.[2] However, the *F. L. S. A.*, specifically excludes from its coverage, officers and agents of labor organizations and therefore under the federal law, labor organizers, have no cause of action for overtime wages.[3]

Through Section 18 of the *F. L. S. A.* Congress allows states to establish higher standards regarding wages and hours of work and other conditions of employment. However, that which is excluded from the scope of the *F. L. S. A.*, under the most elementary rules of statutory construction, must be deemed excluded from any legislation enacted under Section 18. Thus a State may not, under Section 18, legis-

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[1] See for example, the definition of a "labor officer" contained in the Labor Management Reporting and Disclosure Act of 1959, *29 U. S. C.*, Section 401 *et seq.*, which illustrates the intent of Congress in this area.

[2] *Williams* v. *United Mine Workers*, 172 S. W. 2d 202 (1943).

[3] The record of this case shows that the functions performed by respondent were those of an organizer with substantial independent judgment and authority. It is inescapable, that in said capacity, respondent was a labor officer, excluded from the coverage of the *F. L. S. A.* and from the provisions of any law applicable to industries in the field of interstate commerce, notwithstanding the provisions of any state law to the contrary. *29 U. S. C.* Sections 203(d); 213(a)(1); 218.

late over a subject matter explicitly excluded from the coverage of the *F. L. S. A.* A contrary interpretation would render Section 3(d) of the *F. L. S. A.* academic, with no legal effect whatsoever in the field of labor relations and in the field of interstate commerce.

Act 379, upon which the instant case was allegedly based, through its Section 5, 29 L. P. R. A. § 274, recognizes the existence of certain conditions germane to industries in interstate commerce which merits that they be accorded special consideration. Thus, through Act 379, the Puerto Rican legislature has adopted the provisions of the *F. L. S. A.* legislating in the field of interstate commerce. Thus the decision in this instant case would be in overt conflict with federal legislation.

Despite the public policy emanating from the *F. L. S. A.*, the Supreme Court of Puerto Rico in the instant case has affirmed the erroneous decision of the Superior Court of Puerto Rico, to the effect that an officer of a labor organization is entitled to overtime compensation, which decision is not only unsound but also repugnant to the policy enunciated by Congress in the *F. L. S. A.*[4]

This case poses an important and novel question of law which deserves review by this Honorable Court. The impending danger upon organized labor and the detrimental consequences which emanate from the decision merits that the issues raised in the instant case be reviewed by this Honorable Court.

If claims of this nature are allowed to stand, they would disrupt and ultimately destroy organized labor, for the nature of the functions performed by labor officers require

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[4] *Bethlehem Steel Co.* v. *N. Y. L. B.*, 330 U. S. 767 (1947).

that they spend extra hours in the performance of their duties.[5]

There is no doubt that said decision is in open conflict with the applicable federal law and the prevailing doctrine ennunciated by this Court in favor of a uniform national labor policy.[6]

In essence, Congress' mandate was that under its plenary power over interstate commerce, states were precluded from interfering with the labor movement in any way which might contravene the uniform national policy in this field.

Conclusion

The Honorable Supreme Court of the Commonwealth of Puerto Rico has erred in refusing to review a holding by the Superior Court of Puerto Rico to the effect that a labor organizer has a cause of action for overtime work under Act 379, despite the fact that such action is barred by section 3(d) of the *F. L. S. A.*[7] The decision of the Honorable Supreme Court of Puerto Rico, if allowed to stand,

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[5] The Supreme Court of Puerto Rico has decided in the case of *Unión de Trabajardores de la Cervecería* v. *Medina*, case Number R-61-218, Writ of Certiorari filed before this Court on this same date, that a president of a labor organization, is an employee within the meaning of Local Act 379, and thus not excluded from the provisions of the *F. L. S. A.* If actions of this kind are allowed to stand, the result would be an "open sesame" for thousands of claims by labor officers and agents against their labor unions, against the express intention of the federal law in this field.

[6] See: *Bethlehem Steel Co.* v. *N. Y. L. R. B.*, 330 U. S. 767 (1947); *Missouri* v. *Kansas Natural Gas Co.*, 265 U. S. 298 (1924); *Marine Engineers Beneficial Association* v. *Interlake Steamship Co.*, 8 L. ed. 2d 418 (1962); *Textile Workers* v. *Lincoln Mills*, 353 U. S. 448 (1957); *Steelworkers* v. *Warrior and Gulf Co.*, 363 U. S. 574 (1961); *In re Greens Petition*, 369 U. S. 747 (1962).

[7] *N. L. R. B.* v. *Walton Mfg. Co.*, 369 U. S. 404 (1962).

will greatly affect the growth and development of organized labor, in Puerto Rico and in the entire United States. The immediate danger created by said decesion warrants that a writ of certiorari issue from this Court, for said decision is in open conflict with the federal law, in a field where a uniform national policy should prevail.

PRAYER

Wherefore it is respectfully prayed that the writ of certiorari herein requested be issued and that the judgment of the Supreme Court of the Commonwealth of Puerto Rico in case Number 63-12 be reversed.

Respectfully submitted,

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APPENDIX A

Statutes:

1. 28 *U. S. C.*, 1258(3):

"Final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court as follows:

(1) * * *

(2) * * *

(3) By writ of certiorari * * * where any title, right, privilege or immunity is specially set up or claimed under the Constitution treaties, or statutes of, or commission held or authority exercised under the United States.

2. Act Number 379 of May 15, 1948:

(a) 29 L. P. R. A. Section 274:

"Every employer who employs or permits an employee to work during extra hours shall be obliged to pay him for each extra hour a wage rate equal to double the rate agreed upon for regular hours: Provided, however, that every employer in an industry in Puerto Rico covered by the provisions of the Fair Labor Standards Act enacted by the Congress of the United States of America on June 25, 1938, as heretofore or hereafter amended, shall be under obligation to pay only for each hour of work in excess of forty (40) hours a week, a wage at the rate of not less than time and a half the rate of wage agreed upon for regular hours, save when by a decree of the minimum wage board or by a collective labor agreement other working and/or compensation standards is heretofore or hereafter fixed * * *"

3. Fair Labor Standards Act, 29 *U. S. C.*, Section 203 (d):

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in

relation to an employee but shall not include the United States or any State or political subdivision of a State, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization."

29 *U.S.C.*, Section 213(a)(1):

"The provisions of sections 6 and 7 shall not apply with respect to (1) any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Secretary of Labor)."

29 *U.S.C.*, Section 218:

"No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this Act or a maximum workweek lower than the maximum workweek established under this Act, and no provision of this Act relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this Act. No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act."

APPENDIX B

Opinions and Judgments Below

IN THE

SUPERIOR COURT OF PUERTO RICO

SAN JUAN PART

CIVIL #60-2046

RE: WAGE CLAIM (Act No. 10 of 1917 as amended)

FREDDY CASTRO,

Plaintiff,

vs.

SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA (ATLANTIC GULF DISTRICT) PUERTO RICO DIVISION; AND KEITH TERPE, PRESIDENT AND/OR AGENT,

Defendants.

ORDER

PETITION FOR NON SUIT

Having call this case for hearing on November 8, 1962, the parties appeared through their respective counsels and the evidence of the plaintiff was heard, which continued the following day. At the end of the presentation of plaintiff's evidence, the defendants presented a motion for non suit. A period of time was granted to the parties to file briefs, the defendant having filed his and not so the plaintiff.

It is alleged in the complaint that plaintiff worked for defendants as a labor organizer on the basis of a regular salary of $70.00 for forty (40) hours a week.

Appendix B

Defendants allege that the Fair Labor Standard Act, 29 U. S. C. sec. 201 et seq., is applicable to this case, law which in its section 3(d) expressly excludes from its coverage the officers and agents of an organization.

Although it is true that in this case the provisions of the Federal Law apply, it is not less true that the local laws also apply, being applicable to the same provisions of Act 379 of May 15, 1948, 29 L. P. R. A. 271, and specifically article 5 of the same.

Regarding the fact that plaintiff has no right to claim from the defendants, because he was a labor organizer and as such an officer of the same—without deciding at this time whether he was or was not an officer of the defendants, it not being necessary for the purposes of deciding the motion for non suit—we now decide that plaintiff rendered services to the defendants as employee and, therefore, the case of *Medina* v. *Unión de Obreros Cervecería Corona*, etc. Writ of Review No. R. 62-128, decided on November 30, 1962, is applicable, where the Associate Justice, Mr. Blanco Lugo, expressed as follows:

> "Having established the basic fact that a union is covered by the provisions of Act No. 379 when it acts as an employer, let us examine carefully the facts of this case to determine whether the relation of employer and employee was created between the parties. We readily agree that if plaintiff's duties had been limited to those normally and ordinarily performed by the president of an organization—hereinafter referred to—the very nature of the duties would exclude the relation above mentioned. See, *The Unpaid Local Leader*, 3 Lab. L. J. 685 (1952). Nevertheless, under the label of "president" he was assigned duties which properly belong to an ordinary employee, such as visiting daily the enterprises in the metropolitan area with which the Union had re-

lations, with the obvious purpose of supervising compliance with the obligations contracted by virtue of the collective agreement, all of it for the defense and protection of the interests of its affiliates. This obligation extended to the limited supervision of all the local filial unions in the different towns of the Island. In this respect, it is significant the manner in which his compensation was fixed, always considering him equal to an employee of the enterprise in the field to which he had been engaged prior to being designated to preside the Union, and that he preserved all the fringe benefits provided for the employees in the contract. All these concurring circumstances convince us that regarding these activities of daily supervision in compliance with the collective agreement in the metropolitan area and in the island, the plaintiff was an employee of the Union, and if while performing such activities he worked in excess of eight hours a day, the Union—as an employer—is bound to pay him therefor at double rate.''

Having analyzed the evidence presented by plaintiff, without entering into the details of it, the Court understands that the motion for non suit is improper, there being evidence which susfains some of the allegations of the complaint.

By virtue of the above expressed, the motion for non suit is denied.

Given in San Juan, Puerto Rico, February 13, 1963.

Be it notified.

/s/ J. Rivera Barreras
J. Rivera Barreras

Appendix B

[SAME TITLE]

ORDER

MOTION FOR RECONSIDERATION AND CLARIFICATION OF RESOLUTION

Having seen the motion for Reconsideration and Clarification of the defendants, and having examined the Order dismissing the motion for Non Suit—where it was decided that plaintiff rendered services to the defendants as employee—, it is unnecessary to decide whether he was an officer of the defendants.

The clarification requested is also unnecessary.

Given in San Juan, Puerto Rico, on March 4, 1963.

Notify.

/s/ J. Rivera Barreras
J. RIVERA BARRERAS
Superior Court Judge

Appendix B

IN THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

NUMBER 63-12

SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC, GULF, LAKES AND INLAND WATER DISTRICT, AFL-CIO,

Petitioner,

vs.

HONORABLE JOSE N. RIVERA BARRERAS, JUDGE, SUPERIOR COURT OF PUERTO RICO, SAN JUAN PART,

Respondent.

EX REL FREDDY CASTRO

Division composed by the Chief Justice Mr. Negrón Fernández and the Associate Justices Mr. Blanco Lugo and Mr. Ramírez Bages.

ORDER

San Juan, Puerto Rico, March 15, 1963.

The writ for certiorari is hereby denied.

It was so ordered by the Court, as witnesses the signature of the Chief Justice.

Luis Negrón Fernández
Chief Justice

I attest:

Ignacio Rivera
Clerk